possible for courts regarded as competent to try only the very smallest cases, to usurp the jurisdiction of the highest court. By the rule of the principal case jurisdictional limits would be set at naught by a provision having no direct bearing on them. On the other hand the plaintiff has a right to sue in these lower courts if he has a proper claim. The fact that by doing so the defendant will not be able to secure certain extraordinary relief he might otherwise have, does not seem sufficient ground for holding as is done in South Carolina, that the defendant may throw the plaintiff out of court. As a question at law, then, the view taken by the majority of the courts seems sound. The plaintiff has a right to sue in this court, and the defendant cannot avail himself of the general right to counterclaim because he cannot bring his cause of action within the proper limits.

As, however, the defendant, merely because of the size of his claim, is deprived of substantial relief at law to which he would otherwise be entitled, on the analogy of certain other cases, he should have relief in equity. If a defense ordinarily available at law cannot under the peculiar circumstances of a case be used, equity will enjoin execution of the judgment.[4] So in these cases the defendant ought to be allowed an injunction against the execution of the plaintiff's judgment till, proceeding with due diligence, he can procure his judgment to set off against the plaintiff's. If necessary equity might well go farther, and not only enjoin execution of the plaintiff's judgment, but also bring the plaintiff into equity and set off his judgment against the defendant's claim. Where the plaintiff is insolvent and the defendant's claim cannot be set up against him at law, this relief is commonly granted.[5]

DISCRIMINATION AGAINST NEGROES AS JURORS. — Few questions arising under the Fourteenth Amendment have proved more fruitful of controversy than that as to discrimination against negroes in drawing jurors. It is, indeed, no longer disputed that a statute providing that only white men shall be eligible as jurors is in conflict with the amendment. A negro tried by a jury empanelled under such a statute, or tried under an indictment found by a grand jury so drawn, is deprived of the "equal protection of the laws."[1] On the other hand, it is clear that a negro is not entitled to trial by a jury composed in whole or in part of members of his own race. All that is required is that no discrimination shall be made, in constituting the jury, on the ground of race.[2] Negroes and white men who have the same qualifications as to property, intelligence, and the like, must stand the same chance of being drawn as jurors.

The real dispute comes in the case in which a statute provides that public officers shall select from the whole body of citizens such as they think competent to act as jurors, the grand and petit juries to be drawn from among the persons so selected. Undoubtedly such a statute makes it easy to exclude negroes, disqualified in no respect except as to race, with little chance of detection. Yet the fact that this danger exists is not, in itself, a ground of objection. A negro cannot complain that he is deprived of his constitutional rights, unless he can prove that there was, in fact, discrimination on

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[4] Baltzell & Chapman *v.* Randolph, 9 Fla. 366.
[5] Hiner *v.* Newton, 30 Wis. 640.

[1] Strauder *v.* West Virginia, 100 U. S. 303; Neal *v.* Delaware, 103 U. S. 370.
[2] Virginia *v.* Rives, 100 U. S. 313.

the ground of race in selecting the grand or petit jury, as the case may be.[3] But there is no conclusive presumption that the officers have exercised an honest judgment; if the fact is clearly shown to be otherwise, and the accused nevertheless compelled to stand trial, the amendment is violated.[4]

In a decision just announced by the Supreme Court of the United States, this principle is reaffirmed. *Rogers* v. *Alabama*, 24 Sup. Ct. Rep. 257. The accused objected that the commissioners appointed to select the grand jury excluded all negroes solely on the ground of color. This objection was overruled by the state court, as not made in proper form. The United States Supreme Court, however, held that the point was properly raised and the objection good in substance. As the state court had previously declared that the statute under which the jurors were selected warranted no such discrimination,[5] it might be argued that the act complained of was not the act of the state. If the commissioners, in making the alleged discrimination, acted in violation of their duty, their act could hardly be called the act of the state. And it is plain that the amendment applies only to the acts of the states,[6] and that the Supreme Court cannot review the action of a state court, if it has failed to give relief from the wrongful act of an individual because of a mistaken opinion on a point of procedure.[7] But the accused was deprived of his constitutional rights not only by the act of the commissioners, but also by the act of the court in pronouncing judgment after a trial under the improper indictment.[8] This was clearly the act of the state and within the purview of the amendment. A federal question being thus raised, it is settled that the Supreme Court may go into the merits of the case, although the state court may have held that the constitutional point could not be considered because not properly pleaded.[8]

CONFLICTING EQUITABLE CLAIMS TO THE SAME RES. — When a person is subject to two equally meritorious equitable claims for the same property owned or subsequently acquired by him, the claim prior in point of time is preferred.[1] Since both are equally meritorious with the sole difference that the prior, when it arose, immediately attached to the property as an equity, or, if the property was not yet acquired, gave an inchoate right to control the property when it should be acquired, a subsequent claim without greater merit should not displace the already existing equitable right. A recent New Jersey case, where the subsequent claim arose out of the very acquisition of the property by the obligor, opens the discussion of a more troublesome question. One Wood, under a duty to a corporation to pay the price of land out of his own substance, bought the land under an option which he held in trust for that corporation, and paid for it, in breach of trust, with part of a fund he held in trust for a third person. It was held that the third party, as against the corporation, had no rights in the land. *Seacoast R. Co.* v. *Wood*, 56 Atl. Rep. 337.

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[3] Williams *v.* Mississippi, 170 U. S. 213.
[4] Neal *v.* Delaware, *supra*.
[5] See Green *v.* State, 73 Ala. 26.
[6] Civil Rights Cases, 109 U. S. 3.
[7] *Cf.* Caldwell *v.* Texas, 137 U. S. 692.
[8] Carter *v.* Texas, 177 U. S. 442.

[1] Cory *v.* Eyre, 1 De G., J. & S. 149.